HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 10 OF 2006
(Suo Moto)

IN
CIVIL APPLICATION NO. 2773 OF 2000
IN

FIRST APPEAL NO. 2758 OF 2000.

High Court on its own Motion.

V/s.

M/s. Parekh Machinery Stores, Sangli
Through its Partner
Ramanlal Gangaram Parekh & Anr. ..Applicants.

Versus.

Shah Subhash Vadilal & Co., ..Opponents.

Shri. A. A. Kumbhkoni with Shri. A.P. Kulkarni for the applicants.

Shri. S. G. Deshmukh for the Opponents.

CORAM: S.B.MHASE,J.

DATE : AUGUST 18, 2006.

ORAL JUDGMENT :

1. This is a suo motto review to recall the order passed by this Court on 24th April 2000 in Civil Application No. 2773 of 2000 in First Appeal No.

2758 of 1983. The said order is as follows:

> "Heard both the learned Advocates for their respective parties. In view of the order dated 20.2.1985 passed by the learned Single Judge in W.P. No. 357/1985 as reproduced on page 4 of this C.A., I recall my order dated 25.1.2000. The learned Advocate Shri. R.D.Suryavanshi for Shri. Deshmukh for the respondents has no objection to order being recalled.
>
> C.A. is allowed in terms of prayer cl. A. No order as to cost."

2. First Appeal above referred to has been filed as against the decree passed in Special Civil Suit No. 15 of 1980 by the Civil Judge, Senior Division, Satara. The said suit was valued for the purposes of court fees and jurisdiction at Rs.39,940/-. However, the said suit was decreed in favour of the plaintiff- respondent to the extent of Rs.30,000/- by judgment and decree dated 30th September 1983. By the said decree it was further directed that the plaintiff - respondent is entitled to interest at the rate of 9% from the date of filing of the suit till realisation of the amount by the plaintiff - respondent. As per the pecuniary jurisdiction of this Court, as it was in the year 1983, First Appeal was preferred to this Court and it

was admitted. In the said appeal, interim stay to the execution of the decree was not granted, and therefore, the respondent - plaintiff filed a darkhast bearing Special Darkhast No.52 of 1983 in the Court of Civil Judge, Senior Division, Sangli, since the appellant was/is residing within the jurisdiction of Sangli Court. By order dated 17th April 1984, Joint Civil Judge, Sr.Division, Sangli rejected Exhibits 13, 15 & 35 and allowed Exhibit 17 from the said Special Darkhast No. 52 of 1983. Therefore, writ petition under Article 227 of Constitution of India was filed by the appellant challenging order dated 17th February 1984. Said Writ petition was numbered as Writ Petition No. 357 of 1985. It appears that, at some point of time it was pointed out that the first appeal and writ petition are arising out of the same dispute between the same parties, and therefore it was directed that writ petition and first appeal should be heard together. However, later on during the pendency of these matters there was amendment in the Bombay Civil Courts Act, 1869 by Maharashtra Act No. III of 1999. The amended Section 26 was considered by the learned Single Judge Bench of this Court (Coram : J. A. Patil, J. (as he then was)) in First Appeal No. 411 of 1983 on 16th December 1999 and it was found

that as per the said amendment jurisdiction of the District Court increased to Rs.2 lacs, and therefore Appeals filed in this Court wherein the claims involved was less than for Rs.2 lacs will have to be transferred to the respective District Courts. In view of the said judgment several matters were transferred to the respective District Courts. In the same way, First Appeal No.2758 of 1983 was transferred to District Court, Satara by order of this Court dated 25th January 2000. Thereafter the appellant in First Appeal No. 2758 of 1983 filed Civil Application No. 2773 of 2000 making a prayer that the order dated 25th January 2000 passed by this Court in First Appeal No. 2758 of 1983 be recalled and the record and proceedings of original first appeal which were already transferred to the District Court be recalled. This prayer was made pointing out the order passed on 20th February 1985 while admitting the above referred writ petition. The said order passed in Writ Petition reads thus:

"Rule. To be heard along
with F.A.2758/83."

3. When this application was placed before the

learned Single Judge, the above referred order, which is under suo motto review was passed. Since the said order was passed, First Appeal along with record and proceedings was called from the District Court, satara and listed for final hearing.

4. This Court by order dated 6th July 2006 pointed out the procedural problems and difficulties and insisted to take a suo motto review, and thus directed the Registrar to place the matter before the Hon'ble the Chief Justice. Accordingly, the matter was placed before the Hon'ble the Acting Chief Justice. By order dated 19th July 2006 all the matters were transferred to this Court. In view of this transfer and directions of the Hon'ble the Acting Chief Justice, this Court passed an order on 10th August 2006 to register the suo motto review petition as against the order passed in Civil Application No. 2773 of 2002 in First Appeal No. 2758 of 1983, and therefore this review petition.

5. As the jurisdiction of District Court is now Rs.2 lacs all the matters valued upto Rs.2 lacs are required to be considered by the District Court in view of the judgment of this Court in First Appeal No.

411 of 1983 dated 16th December 1999. Since the District Court is having enhanced jurisdiction, this Court does not have the jurisdiction to consider the matters wherein the subject matter is valued at less than Rs.2 lacs. Therefore, it will be inappropriate to hear and entertain this first appeal by this Court. Therefore, it is obligatory for this Court to transfer the First Appeal to the District Court which is having jurisdiction to decide the matter.

6. If the matter is decided by the District Judge then there is regular remedy of second appeal available to the aggrieved party/ies. If the said First Appeal is decided by this Court in view of the order above referred to, not only it is an exercise of jurisdiction by a Court having no jurisdiction, but a valuable statutory remedy of second appeal will be taken away from the parties, and thus the aggrieved party/ies will be put to a loss, namely, the loss of a remedy which has been provided by the Code of Civil Procedure, 1908.

7. There is one more reason not to consider this appeal along with writ petition; because issues involved in First Appeal are different than the issues

involved in the Execution petition. The executing Court is not supposed to go beyond decree, and when this Court is to consider the decree this Court cannot go beyond the decree. But the decree being before the same Court the result will be that all objections will be considered by the same Court as if in the trial itself. Thus, it will lead to a procedure which is not contemplated by the Code of Civil Procedure, 1908. Since the power and jurisdiction of this Court in respective matters, namely, the First Appeal and the Writ Petition, are quite distinct and different it is inappropriate to club these matters together.

8. Taking an overall view of the matter, therefore, the appropriate course open qua to deal with these matters is to transfer the First Appeal No. 2758 of 1983 to the District Court for disposal in accordance with law.

9. Under these circumstances, it is necessary to review and recall the order dated 24th April 2000. Therefore, this review petition is allowed in the following terms:

(a) First Appeal No. 2758 of 1983 and

Writ Petition No. 357 of 1985 are hereby separated.

(b) First Appeal No. 2758 of 1983 along with all Civil Applications and Cross-objections be transferred to the District Court, Satara as per the order of this Court dated 25th January 2000 and the District Court shall dispose of the said appeal in accordance with law within a period of three months from the date of receipt of record and proceeding from this Court.

(c) Writ petition No. 357 of 1985 be listed for final hearing and disposal before this Court.

(d) Rule accordingly is made absolute in review petition.

(S.B.MHASE, J.)

:sac/2006/single.